



PUBLIC NOTICE

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DA 17-404

Released: April 28, 2017

**WIRELINE COMPETITION BUREAU PROPOSES TO PUBLICLY RELEASE
THE LISTS OF THOSE COUNTIES WHERE LOWER SPEED BUSINESS DATA SERVICES
WILL BE DEEMED COMPETITIVE, NON-COMPETITIVE, OR GRANDFATHERED**

WC Docket Nos. 16-143, 05-25; RM-10593

In this Public Notice, the Wireline Competition Bureau (Bureau) proposes to publicly release lists of those counties where lower speed business data services will be deemed competitive, non-competitive, or grandfathered pursuant to the *Business Data Services Order* (Order) released by the Commission on April 28, 2017.¹ The *Business Data Services Order* establishes a competitive market test for identifying counties served by price cap incumbent local exchange carriers (LECs) that evidence sufficient competitive presence to warrant deregulation of DS1 and DS3 end user channel terminations, among other business data services. The competitive market test uses two sets of data to evaluate the competitive status of price cap-served counties across the U.S.: location data from the Commission's 2015 special access data collection (*2015 Collection*) and data on broadband service provided by cable operators from the Commission's periodic Form 477 data collection. Based on this test, counties are deemed competitive or non-competitive.

As discussed below, the identification of a county as competitive, non-competitive, or grandfathered will in some instances indirectly reveal the approximate number of locations which a competitive provider is capable of serving, information which is competitively sensitive and which is derived from information that has been designated as highly confidential.² Therefore, consistent with Commission rules,³ the relevant protective order issued in this proceeding,⁴ the Trade Secrets Act,⁵ and

¹ *Business Data Services in an Internet Protocol Environment, Technology Transitions, Special Access for Price Cap Local Exchange Carriers, AT&T Corporation Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, WC Docket No. 16-143, GN Docket No. 13-5, WC Docket No. 05-25, RM-10593, Report and Order, FCC 17-43 (rel. April 28, 2017) (*Business Data Services Order*).

² Grandfathered counties are counties that do not satisfy the competitive market test but for which a price cap incumbent LEC had obtained Phase II pricing flexibility prior to the reforms adopted in the Order. In grandfathered counties served by two or more price cap incumbent LECs, only the price cap incumbent LEC that had obtained Phase II pricing flexibility is grandfathered.

³ See 47 CFR §§ 0.457, 0.459, 0.461.

⁴ *Special Access for Price Cap Local Exchange Carriers, AT&T Corporation Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, WC Docket No. 05-25, RM-10593, Order and Data Collection Protective Order, 29 FCC Rcd 11657 (WCB 2014) (*Data Collection Protective Order*).

⁵ 18 U.S.C. § 1905.

Commission precedent,⁶ by releasing this Public Notice the Bureau commences a process that would allow the agency to publicly release lists of counties where the provision of business data services is deemed competitive, non-competitive, or grandfathered under the terms of the Order.

The *2015 Collection* is a comprehensive data collection conducted to assist the Commission in analyzing competition for business data services.⁷ We have recognized that much of the data we collected is competitively sensitive and not available to the public.⁸ As described more fully in the *Business Data Services Order*, location data from that collection are used as a factor in determining whether a county is competitive, non-competitive, or grandfathered.⁹ While publicly designating a county as competitive, non-competitive, or grandfathered would not directly release any confidential location data to the public, it could, in at least some instances, allow competitors to determine, in combination with their own knowledge, information about the percentage of locations able to be served by individual providers against which they compete.¹⁰ This information has been designated as competitively sensitive and, in accordance with established Commission procedures, we are therefore giving affected providers notice and an opportunity to object before we publicly release it.

Affected parties have ten (10) business days from the date of the release of this Notice to object to the release of their own data. **The deadline for filing such objections is May 11, 2017.** Parties objecting must explain why publicly identifying whether a county is competitive, non-competitive or grandfathered will reveal information they have not already made available to the public and will harm them competitively, including a description of the extent of that harm.¹¹ If the Commission receives no objections, it will publicly release the lists of counties on **May 12, 2017.**

Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.415, 1.419, affected parties may file any objections using the Commission's Electronic Comment Filing System

⁶ See, e.g., *The Wireless Telecommunications Bureau and the Wireline Competition Bureau Propose To Release Form 477 4G LTE Mobile Speed Data To Facilitate Implementation of Mobility Fund II Support*, WT Docket No. 17-80 WC Docket No. 10-90, WT Docket No. 10-208, WC Docket No. 11-10, Public Notice, 32 FCC Rcd 2042 (rel. March 29, 2017). See also *Examination of Current Policy Concerning the Treatment of Confidential Information Submitted to the Commission*, GC Docket No. 96-95, Report and Order, 13 FCC Rcd 24816, 24853, para. 63 (1998) (Commission will not disclose confidential information in an order without permitting party opportunity to seek review).

⁷ *Special Access for Price Cap Local Exchange Carriers; AT&T Corp. Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, WC Docket No. 05-25, RM-10593, Report and Order and Further Notice of Proposed Rulemaking, 27 FCC Rcd 16318 (2012).

⁸ See *Data Collection Protective Order*, 29 FCC Rcd at 11658-59, para. 4.

⁹ See *Business Data Services Order* Part IV.C. for a detailed explanation of how the competitive market test identifies counties as competitive, non-competitive or grandfathered.

¹⁰ For example, if there is a single competitive provider in a county designated as competitive and based on publicly available FCC Form 477 data it is evident that the county does not meet the cable prong of the competitive market test, then other providers or potential providers know from the designation of the county as competitive that the existing competitive provider is capable of serving at least 50 percent of the business locations. If other providers otherwise had reason to believe that the competitor was capable of serving only 25 percent of the locations, the public identification of the county as competitive would give those providers some competitive information that they did not have. However, other providers would not be able to determine with more specificity the actual percentage of buildings in the county that the competitive provider is able to serve, and certainly could not determine *which* locations the competitor is capable of serving.

¹¹ In the case of any objection that is denied, the provider may file an application for review by the Commission in accordance with section 0.459(g) of the Commission's rules. 47 CFR § 0.459(g). Materials will be accorded confidential treatment until the Commission acts on any timely applications for review and, if denied, until a court acts on any timely motion for stay of an order by the full Commission denying confidential treatment. *Id.*

(ECFS). See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998). An additional courtesy copy may also be sent to SpecialAccess@fcc.gov.

- Electronic Filers: Objections may be filed electronically using the Internet by accessing ECFS: <http://apps.fcc.gov/ecfs>.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
 - All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th Street, SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.
 - Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
 - U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington, DC 20554.

People with Disabilities: To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at (202) 418-0530 (voice) or (202) 418-0432 (tty).

This action is taken pursuant to sections 4(i), 5, 201-205, 211, 215, 218, 219, 303(r), and 332 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 155, 201-205, 211, 215, 218, 219, 303(r), and 332, Section 4 of the Freedom of Information Act, 5 U.S.C. § 552(b)(4), and authority delegated under section 0.291 of the Commission's rules, 47 CFR § 0.291.

For further information, please contact Marvin Sacks, Pricing Policy Division, Wireline Competition Bureau, at (202) 418-2017 or via email at marvin.sacks@fcc.gov.

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